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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B9

FILE: [REDACTED]  
EAC 03 126 53703

Office: VERMONT SERVICE CENTER

Date: APR 27 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 38-year old native of Vietnam who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. According to the evidence on the record, the petitioner wed her United States citizen spouse on May 29, 2002 in San Jose, California. The petitioner claims to have resided her citizen spouse from May 2002 until December 2002. The petitioner filed the instant petition on March 14, 2003. In a decision dated September 30, 2004, the director denied the petition, finding that the petitioner failed to establish that she entered into the marriage to the citizen or lawful permanent resident in good faith and that she is a person of good moral character.

The petitioner submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

Further, the regulation at 8 C.F.R. § 204.2(c)(2)(ix) states:

*Good Faith Marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

Because the petitioner furnished insufficient evidence to establish that she entered into her marriage with a United States citizen in good faith and that she is a person of good moral character, she was requested on March 8, 2004, to submit additional evidence. The director specifically listed evidence the petitioner could submit to establish each of these claims.

The petitioner submitted a response dated August 18, 2004. In reference to the issue of the petitioner's good moral character, she stated that she "had never been arrested nor had any problems with the police . . . never received public assistance . . . [or] committed fraud to obtain an immigration benefit." As it relates to the issue of whether she entered the marriage in good faith, the petitioner stated:

Our relationship started in Vietnam and Abuser courted me and brought me to this country in the hope of having a good family life with him . . . Abuser and Self-Petitioner lived with Abuser's mother for two weeks upon their arrival from Vietnam and thereafter moved to an apartment."

The evidence contained in the record at the time of the director's denial relating to the issue of a bona fide marriage consisted of the following:

- The petitioner's statement
- The petitioner's marriage certificate.
- Undated, uncaptioned photographs of the petitioner and her spouse.
- A lease dated November 27, 2002 showing the petitioner, her spouse, and child rented apartment [REDACTED]
- A psychiatric evaluation report.
- An unsigned lease indicating the petitioner, her spouse, and child [REDACTED] beginning June 1, 2002.

The petitioner failed to submit any of the documentation requested by the director to support her statement that she is a person of good moral character and that she entered into the marriage in good faith. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, counsel for the petitioner claims that the petitioner was "not able to obtain a police report as due to their inability to speak fluent English, and they were given the run around with the San Jose Police department thus the police clearance was obtained at a later time." Counsel does not elaborate on this argument or provide any documentary evidence to support her statement; the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Moreover, counsel's argument that the director "abused her power . . . [because she] could have requested [sic] evidence for said clearance as opposed to denying the whole application," is without merit. The request for evidence issued by the director on March 8, 2004, specifically stated:

Submit evidence of your good moral character. The following may be submitted:

1. Your own affidavit *supported by police clearances* \* or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.

\* For your convenience a listing of agencies that can assist you in obtaining police clearances from each state in the United States has been enclosed with this notice. Locally issued clearances may still be submitted, and are required from localities that do not offer state issued clearances. Please note: if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable.

Although given the opportunity to explain her difficulty in obtaining the police clearance, the petitioner did not make any such indication. She also failed to submit any other evidence to support her statement, such as affidavits from others attesting to her good moral character. Accordingly, counsel's argument cannot be supported.

On appeal, the petitioner submits a copy of a police clearance from the San Jose Police Department dated October 14, 2004 and three letters which briefly discuss the petitioner's marriage. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Based on the record before the director at the time of her decision, we concur with the director's finding that the petitioner failed to establish that she is a person of good moral character and that she entered into the marriage with her citizen spouse in good faith.

Even if the evidence submitted on appeal is considered, we note the petitioner's failure to submit insurance policies in which she or her spouse is named as the beneficiary, bank statements, tax records and other documents that show she shared accounts and other responsibilities with her spouse, or evidence of joint ownership of property. No children were born of the marriage. The affidavits provided contain scant information about the petitioner and her husband's courtship and married life. The record has not established a commingling of funds and assets or joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together.

Beyond the decision of the director, the record fails to establish that the petitioner resided with her spouse. The petitioner claims to have resided with her citizen spouse from May 2002 until December 2002. In addition to her own statement, the petitioner submits a letter from her brother-in-law, which states, "they were living with us . . . for 2 weeks." To support the claim that the petitioner and her spouse resided together, the petitioner submitted a copy of a lease which reflects that she and her spouse attempted to rent an apartment beginning June 1, 2002. The lease has not been signed by the petitioner, her spouse, or the apartment manager. The record does contain a letter purportedly written by the apartment manager to verify that the petitioner, her spouse, and daughter "are still rented." The letter does not indicate when the lease began or how long they petitioner and her spouse resided in the apartment.

The record contains a second lease, dated November 27, 2002, reflecting the petitioner, her spouse and daughter renting an apartment for the period beginning December 2, 2002. However, given the petitioner's statement that she stopped residing with her spouse in December 2002, this lease is of little evidentiary value in establishing that the petitioner resided with her spouse.

For this additional reason, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the petition will be denied.

**ORDER:** The petition is denied.